**The transformative potential of post-war justice initiatives in Bosnia and Herzegovina**

This chapter investigates the transformative potential of civil society initiatives in post-war Bosnia and Herzegovina. The implementation of transitional justice in the former Yugoslav region heavily relied on retributive justice, through the work of the International Criminal Tribunal for the former Yugoslavia (ICTY) and tribunals. As transitional justice became synonym with war crimes trials, however, civil society initiatives tried to address other marginalised dimensions of the process of dealing with the past. This chapter questions what ‘transformative justice’ might mean in this context, and argues that developing a transformative approach to transitional justice requires shifting away from a focus on international and state-sponsored institutions, and turning towards grassroots processes of dealing with the past. The analysis of these initiatives shows that, compared to the traditional transitional justice paradigm, transformative approaches better capture local understandings of post-war justice. By looking at the cases of the Regional Commission (RECOM) initiative, the 2014 socioeconomic protests and the Women’s Court in Sarajevo, this chapter illustrates the transformative potential of social mobilisation around justice themes, as well as its limitations. In doing so, it takes into account the tension between grassroots activism and professionalization/institutionalisation, the challenges of overcoming ethnicity as an organising principle, and attempts to escape from the ‘liberal transition’ as the paradigmatic goal of transitional justice processes.

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**Introduction**

 In the former Yugoslav region, transitional justice scholars and activists have long been frustrated with the shortcomings of judicial approaches and the instrumental use of post-war-justice for political purposes. Nonetheless, and despite the frustration, local activism in this field has never stopped. This chapter shifts the attention from established transitional justice processes to initiatives carried out at the level of civil society, arguing that it is among social actors that we might be able to identify transitional justice efforts that can be characterised as ‘transformative’. The question, or objective, driving this chapter is thus to locate the transformative potential of transitional justice initiatives in Bosnia and Herzegovina (BiH). We identify three initiatives that will be discussed in greater detail in this chapter: the Regional Commission (RECOM) initiative, the Women’s Court, and the 2014 socioeconomic protests. While very different from one another in some respects, these three cases were selected because they represent the most significant efforts to address post-war justice issues that emerged from the Bosnian (or regional, in the case of RECOM and the Women’s Court) civil society.

Before we proceed with the analysis, two clarifications are in order. First, why do we refer to transformative ‘potential’? Most simply, these grassroots or civil initiatives, at least in the Bosnian context, still occur at the margins of official transitional justice processes, which have mostly been limited to the judicial realm. This marginalisation, and the lack of institutional support, still limit what these initiatives are able to achieve. Second, given the focus of the chapter, it seems relevant and appropriate to clarify our understanding of ‘civil society’. As scholarly interest in the contribution of social actors to political processes has grown over the years, so has the need for debating what characterises civil society. Often defined as the sphere separated from both the state and the market, civil society in post-conflict countries has been heralded as a necessary partner in peacebuilding processes (especially after the ‘local turn’ questioned top-down approaches to post-conflict reconstruction; see Lederach, 1997 for an early discussion of this and Leonardsson and Rudd, 2015 for a recent review), but also the object of critique for being too institutionalised, for responding to the priorities of international organisations and losing touch with the broader society (Belloni, 2007). In our view, civil society cannot be reduced to formally-established NGOs, but includes local and grassroots activists expressing a variety of views. Civil society is a ‘terrain of struggle’ (Rajagopal, 2003: 261), which includes progressive, socially-aware actors, as well as ‘English-language speaking, cosmopolitan local activists who know how to relate to Western donors’ (Rajagopal, 2003: 261), but also nationalist, religious, or conservative groups who might be opposed to post-war justice processes. The term ‘civil society’, in this sense, has a neutral, rather than necessarily positive or emancipatory connotation.

The chapter contributes to the current search for an alternative approach to dealing with the consequences of wartime violence and mass human rights abuses. In particular, it draws on and develops the concept of ‘transformative justice’, engaging with recent work by Lambourne (2009, 2014), Sharp (2012, 2015), Gready and Robins (2014), but also emphasising the need for expanding the scope of critical reflection beyond the field of transitional justice studies to include the work of scholars such as Nancy Fraser (1990, 2005, 2009). The empirical analysis draws on data collected by the authors during several years of fieldwork in Bosnia (2012-2016). This includes interviews with NGOs and local activist groups, transcripts of RECOM proceedings, and observation carried out at RECOM meetings, at the Women’s Court events, and at protests and meetings organised by groups involved in the 2014 protests.

The chapter argues that ‘transformative’ justice in the case of local initiatives in Bosnia means (1) overcoming ethnicity as an organising principle of post-war justice processes; (2) an attempt to include non-institutional actors, going beyond state-sponsored mechanisms and heavily institutionalised civil society organisations; (3) a critique or even rejection of the liberal transition paradigm. The cases we analyse show these issues were identified, implicitly or explicitly, as a form of rupture with conventional transitional justice approaches, and as a way of overcoming some of its limitations. In fact, the most transformative potential can be found, at different levels, among Bosnian post-war justice initiatives that do not resemble transitional justice mechanisms at all.

The chapter is organised as follows. First, we offer a critique of conventional transitional justice approaches, and emphasise the need for an alternative approach to dealing with post-war justice processes. This is followed by a discussion of transformative justice. We focus on three conceptual issues that have been put forward by the literature on transformative justice (the critique of the ‘transition’, the role of the political, and participation in deliberative processes), but are further developed here with specific reference to their importance for civil society-led justice initiatives. Lastly, the chapter analyses three such initiatives: RECOM, the Women’s Court and the 2014 protests. Here it is argued that while RECOM came to be as a response to top-down, legalistic approaches to transitional justice and dealing with the past, it ended up reproducing some of their limitations. The Women’s Court, on the other hand, pushed this critique further, and put great effort into rethinking justice models and organisational processes for transitional justice initiatives. Moreover, while the protests may seem the most unorthodox instance of local mobilisation for post-war justice, they were also the most radically transformative in spirit. This is not only because of the type of claims they raised, which were socioeconomic in nature (and linked to the political economies of the war and transition), but also because of the participatory approach they took to collective deliberation.

**Rethinking transformative justice and the role of civil society initiatives**

Transitional justice has been part and parcel of the broader post-conflict international intervention in Bosnia and Herzegovina and the former Yugoslavia. As a matter of fact, the history of transitional justice, understood here as the ensemble of judicial and non-judicial measures aimed at redressing gross past injustices, is very much intertwined with the post-war justice-seeking experiences in the region. Some of the typical mechanisms of transitional justice were experimented for the first time here (Dragović-Soso and Gordy, 2011: 193). For instance, the International Criminal Tribunal for the former Yugoslavia (ICTY) was the first international tribunal to be established after the International Military Tribunal in Nuremberg. It was the result of the obdurate activism of a group of international lawyers (Hazan, 2004: 49) and part of a broader international justice movement that in the late 1980s and 1990s aimed to consolidate accountability in transitional contexts (Arthur, 2009: 324; Hagan, 2003).

Hence, both in the former Yugoslavia and internationally, the first transitional justice interventions have been characterized by the top-down establishment of international institutions, generally focused on criminal accountability (McEvoy, 2008: 25; Nagy, 2008: 274). While their contribution to normalising the fight against impunity after mass atrocity and consolidating international principles of accountability is indisputable, their limits in tackling complex justice demands in post-war contexts have soon become apparent.

The ICTY, for instance, has been criticised for not being able to live up to its lofty promises of individualising guilt, providing a comprehensive account of the past violence and aiding reconciliation (Clark, 2009: 464). One oft-mentioned problem is the ICTY’s physical and conceptual aloofness from those directly affected by the violence in Bosnia and Herzegovina and the region, which has not been remedied after the setting up of the Outreach Program (Delplas 2007: 219; Mannergren Selimović 2010: 58). The latter was intended to bring about a better understanding of the ICTY and its procedures through a series of events targeted at the local citizenry and victims’ groups, thereby making the tribunal more accessible to them (Arzt, 2006: 230). However, empirical accounts have exposed the incompatibility of the tribunal’s understanding of accountability and victimhood with that of the Bosnian public (Mannergren Selimović, 2010: 54).

In the case of the former Yugoslavia, this alienation of international judicial mechanisms from local constituencies has been further exacerbated by the imposition of transitional justice measures as part of the conditionality for EU accession, and the ensuing politicisation of transitional justice issues (Subotić, 2011a). Political elites from the region have paid lip service to the principles of international justice incarnated by the ICTY in order to pursue international alliances, while at the same time perpetuating the same conflict-era nationalist rhetoric at the domestic level (Subotić, 2009). Moreover, said conditionality has contributed to reducing transitional justice to retributive justice only, understood primarily as cooperation with international tribunals (Touquet and Vermeersch, 2016: 64). This has further consolidated the focus on individual criminal responsibility as the principal lens through which to look at the injustices of the past in the region (Subotić, 2011b).

However, the problematic dominance of institutional solutions centred on criminal responsibility is not a unique characteristic of transitional justice in the former Yugoslavia. A new wave of transitional justice scholarship has taken issue with the institutional and mainly retributive transitional justice model in many different contexts (for example, Clark and Palmer, 2012; McEvoy and McGregor, 2008; Shaw and Waldorf, 2010), focusing on two key shortcomings. First, it denounced the already mentioned prevailing focus on individual criminal responsibility, which prevents unearthing the roots of the violence (Subotić, 2011b: 158-159). Namely, retributive transitional justice can only offer a very fragmentary analysis of the past violence, which leaves out social inequalities and structural discriminations that may have been at the roots of the violence, and that may continue unabated even after the ’transition‘ has ended (Nagy, 2008: 284; Ross, 2003: 174). Second, the literature has criticised the prevalence of institutional interventions in transitional justice (McEvoy, 2008: 26-29). Legal institutions, in particular, due to their alleged neutral and apolitical character, are deemed safe to invest in by international organisations and donors (Oomen, 2008: 893; McEvoy, 2008: 20). However, as discussed above with regards to the ICTY, they are seldom able to contribute to reinforcing domestic legal systems, nor to the broader justice and reconciliation process (Gready, 2006: 8).

In addition to these limitations, scholars have also realised that the conceptual tools we use to study post-war justice processes do not seem equipped to capture local activism on justice issues adequately, especially since the work of many groups has surpassed the ‘transitional’ focus of transitional justice. Here we join the growing debate on transformative justice, and more broadly the new wave of transitional justice scholarship seeking to push its boundaries, to include issues such as socioeconomic justice, gender, and social change (McAuliffe, 2017). While civil society initiatives may be best placed to promote transformative justice, it does not automatically follow that they will. Therefore, in this chapter we reflect on the meaning of transformative justice by pondering on and identifying what elements make local justice initiatives transformative, especially in relation to three conceptual features of transformative justice, briefly discussed below.

The first point to be addressed concerns the problem of post-war justice conceived as merely ‘transitional’. On the one hand, its origins as part of the study of democratisation processes in Latin America and Southern Europe (Kritz, 1995; Teitel, 2003) tied transitional justice to the goal of establishing liberal democracy as a necessary and desirable outcome (see Bunce, 1995; Stark and Bruszt, 1998 and Arthur, 2009 for a critique on this). In countries like Bosnia and Herzegovina, this meant that transitional justice was effectively linked to other elements of institutional, social, and economic transformation that were often contested or viewed as unwelcome by local communities (Laplante, 2008; Nagy, 2008; this is especially visible in the case of socioeconomic reforms). On the other hand, some of the shortcomings of transitional justice processes can be attributed, at least in part, to the fact that ‘interim’ solutions to the legacy of violence are not sufficient. Local justice initiatives in the Bosnian context, then, can be considered transformative if committed to a process of social transformation that has no pre-determined outcomes (Gready and Robins, 2014), and that empowers local actors as agents guiding and directing post-war justice processes, possibly with the support of international organisations.

Second, while there have been efforts to present transitional justice initiatives as technical or neutral, political choices were inevitably behind the decision to privilege approaches that are often legalistic and individualistic in nature. This problem is not even limited to judicial mechanisms, as other internationally-supported programmes have often failed to engage with local communities outside mainstream narratives of conflict, thus ‘squeezing out’ the political or ‘the multitude of conflicts inherent in human life’ from these initiatives (Jones, 2012: 133). As the Bosnian case illustrates, civil society initiatives risk reproducing this problem, especially when working within the constraints set by international donors who explicitly steer away from politically controversial issues. However, the acknowledgment and critique of the ‘political’ in transitional justice is a key element underlying transformative justice thinking. Recovering the political in post-war justice initiatives entails a commitment to deal, through open deliberative processes (Lambourne 2009; Gready and Robins 2014) with the issues and conflicts that local communities deem relevant to achieve the sustainable transformation of society. In this sense, post-war justice processes resemble more spaces of public contestation, where notions of justice are negotiated, adapted and reworked, and where established assumptions and priorities are questioned. The Bosnian initiatives discussed in the following section illustrate the importance of contestation and deliberation, and represent different levels of engagement with the ‘political’ in post-war justice processes.

Third, and following from the previous point, transformative justice represents an attempt to respond to the critique that transitional justice is a top-down endeavour that simplifies complex realities on the ground. By acknowledging the diversity of post-war societies, and the presence of overlapping identities and issues, transformative justice can go beyond the call for simply opening up to civil society organisations, and help us reflect on what are the most appropriate and inclusive modes of deliberation and participation. Drawing on Fraser (1990, 2005), we argue that it is not sufficient to address simple forms of exclusion from political deliberation, as even within an ‘open’ public sphere there might be power relations and differences in resources that prevent participatory parity (Fraser, 1990). Some civil society initiatives, such as the 2014 protests discussed below, promote transformative models of justice by putting the claims and voices of subaltern groups to the forefront of public debate. Transformative justice should also question how boundaries are being set in ways that leave groups of individuals out (for instance, by restricting the definition of ‘victimhood’; McEvoy and McConnachie, 2012), and how the space of deliberation is organised in such a way that makes it impossible for certain issues to be included in the debate (Fraser, 2005 refers to this as ‘misframing’). To sum up, an alternative approach to post-war justice can be transformative only insofar as it provides for political justice too.

Reflecting on the critique of the transitional paradigm, on the politics of transitional justice, and on processes of deliberation, prompts us to ask questions that can be used as benchmarks to assess the transformative potential of RECOM, the Women’s Court, and the 2014 protests: To what extent are these local initiatives open-ended, unbound by the goals of liberal democratic transition? Do they allow for the emergence of alternative political principles, identities, and conceptions of justice? Do they consider the specific features of the transition in each country? Do these initiatives leave the floor open to local communities? Are local communities the initiators, participants, or recipients of the initiatives? To what extent is the initiative guided by international priorities or ‘technical’, ‘neutral’ principles that are not up for discussion? Who is allowed to participate? What issues are discussed, and how are these put on the agenda? How is deliberation conducted? Building on the conceptual framework which emerges from these benchmarking questions, the following section provides an overview and assessment of three important justice initiatives conducted at the level of civil society in Bosnia and Herzegovina.

**Bottom-up justice initiatives and transformative justice in BiH**

This section analyses local justice initiatives and tries to establish to what extent they respond to the features of transformative justice discussed above. While we believe that local initiatives are best placed to promote transformative justice and sustainable social change in post-conflict societies, this does not necessarily imply that they always do, or that they achieve satisfactory results when attempting to do so. Civil society groups vary widely, and so do the three examples discussed below (see Table 1 for an overview of their features and key differences). RECOM was initiated by three regional nongovernmental organisations with the purpose of creating a regional commission and involving victims more actively in shaping the reconstruction of the past. It then obtained the support of international NGOs like the International Center for Transitional Justice (ICTJ), as well as funds and support from international organisations like the EU, the Council of Europe, and various international embassies and foundations. The Women’s Court was similarly initiated by regional women’s organisations with the purpose of creating a symbolic court for women survivors of various forms of violence related to the conflicts of the 1990s, but it received much more limited external support. Like RECOM, the Women’s Court focused on the victims, but it adopted an explicitly feminist approach, and challenged the neat separation of wartime and peacetime violence. The 2014 protests were sparked by industrial workers’ protests, but soon revealed deeper social concerns with an aspect of the war, that is socioeconomic violence (and its continuation during the transition), which was not dealt with by conventional transitional justice approaches in the former Yugoslavia. The three brief accounts of these initiatives, while not being exhaustive, are meant to critically analyse the transformative potential (and limitations) of each.

**Table 1. RECOM, the Women’s Court and the 2014 protests**

|  |  |  |  |
| --- | --- | --- | --- |
|  | RECOM | Women’s Court | 2014 Protests |
| **Years of activity**  | 2006 – (ongoing) | 2010 – 2015  | 2014 – (ongoing) |
| **Purpose**  | Provide a space for victims to tell their stories; obtain a broader reconstruction of the wartime facts; obtain official acknowledgement by region’s politicians. | Provide a space for women to tell their (unknown) stories;support a broader concept of justice, point to structural causes of violence. | To fight against social injustice and political/institutional system that prevents change in BiH.  |
| **Participation** | Mostly NGOs (regional) and active individuals. | Women’s organisations (regional) and women affiliated to or approached by them.  | Citizens’ participation in the protests; grassroots activists established informal groups (some still active). |
| **Institutional support in BiH**  | No | No | No |
| **International support**  | Strong (financial support from EU, foundations/embassies; support by Council of Europe, etc.). | Extremely limited. | International interest; support from Austrian Initiative. |

***The initiative for RECOM***

The idea of a regional truth commission for the former Yugoslavia emerged out of the failures to establish national truth commissions in the region, and particularly in Bosnia and Herzegovina. Here, three different attempts, in 1997, 2000 and 2005, produced only a series of draft statutes, which were never implemented. All of these attempts had been initiated by or with the strong support of the US Institute for Peace (USIP) and aimed to compensate for the limits of the retributive justice process, by providing a space for victims and producing a more comprehensive reconstruction of the past (Kritz and Finci, 2001). However, these initiatives had never really found the support of the local civil society organisations, who felt that the process lacked transparency (UNDP, 2009: 56), or of the victims’ associations, who held that the government should focus instead on more concrete measures to meet their needs (Dragović-Soso and Gordy, 2011: 203). Hence, RECOM’s activists had well in mind the limits of top-down processes, both judicial and non-judicial, when they started pondering on the project of a regional truth commission.[[1]](#footnote-1) RECOM was conceived by three human rights organisations, who already worked at the identification of victims of the Yugoslav wars and had signed a protocol of cooperation in 2004: the Humanitarian Law Center from Belgrade, Documenta from Zagreb and the Research and Documentation Center from Sarajevo. The regional approach was thought to better reflect the regional nature of the Yugoslav wars, and was also translated in the initiative’s goal of establishing an intergovernmental commission with the support of governments from all former Yugoslav states.[[2]](#footnote-2) This last, harder step, despite consuming much of the initiative’s energy, has so far not been reached, also due to the changing political equilibriums in the region. [[3]](#footnote-3)

By consciously addressing the mentioned shortcomings of top-down transitional justice in the region, the organisers aimed at a strongly inclusive and locally-owned process. This initiative had the potential to be one of the most transformative attempts carried out in the former Yugoslavia since the end of the conflicts. The leading RECOM activists wanted the prospective truth commission to be the result of a broad consultation process involving numerous and diverse actors of the local civil society.[[4]](#footnote-4) From 2007 to 2011, 127 consultations were therefore carried out throughout the seven former Yugoslav countries, involving NGOs, victims’ associations (of all ethnic groups), war veterans’ organisations, journalists and artists, to discuss the prospective truth commission and adopt a draft statute. Also thanks to the support of the ICTJ from New York, RECOM managed to secure considerable funds for the consultation and awareness-raising process (RECOM, 2011b). Considering its declared bottom-up, inclusive approach and its awareness of the flaws of previous top-down transitional justice approaches, RECOM clearly displayed some transformative potential. Its advocates presented it as an unprecedented effort of inclusiveness and local ownership: ’If you compare this experience with any experience around the world, you will hardly find any initiative that is so inclusive’.[[5]](#footnote-5) Its democratic organisation, with an Assembly of members and a Coordination Council as representative decision-making bodies, lent credibility to these statements.

However, a closer analysis of the consultation process and of the overall initiative points to a narrow and procedural interpretation of inclusiveness. For instance, in singling out the target groups for the consultations, RECOM’s activists referred often to the organised, and often professionalised, civil society to represent the abovementioned societal groups. For example, the victims were actually *victims’ associations*, the young people were generally *members of* *youth organisations*.[[6]](#footnote-6) Yet, the extent to which these organised groups may represent society at large is disputable.[[7]](#footnote-7) In the particular Bosnian case, if, on the one hand, RECOM’s failure to convince many victims’ associations to participate was considered one of the major flaws of the initiative, on the other, the choice to refer to victims’ associations to represent the victims was also often criticised.[[8]](#footnote-8) In fact, victims’ associations in BiH are often seen as self-interested groups that feature a strong ethnic connotation and often perpetuate the same nationalistic rhetoric that RECOM tried to defeat,[[9]](#footnote-9) while also having limited reach among victims beyond their membership.

With reference to the Serbian case, Obradović-Wochnik (2013) has shown that the idea that NGOs represent the broader public is taken for granted by international actors and scholars. The latter often interpret the silence of the rest of the citizenry as denial or lack of interest, as personal or structural factors that might hinder individuals from participating are generally ignored. Similarly, RECOM’s advocates have not engaged in a deeper reflection on structural inequalities among the various civil society groups that might influence their capacity to participate, and have espoused a conception of civil society as formed exclusively by active and organised individuals/groups. Their emphasis on specialised knowledge on transitional justice, visible in the numerous presentations that often opened the consultation meetings, created distance between the core organisations and those less professionalised, who felt they were not expert enough to contribute in the same way.[[10]](#footnote-10) The kind of engagement that RECOM asked for was demanding even for professional activists in terms of time and resources.[[11]](#footnote-11) As a consequence, as admitted by RECOM’s activists themselves, ‘the majority did not have the means nor the possibility to participate more actively’.[[12]](#footnote-12)

The impediments to participation in RECOM were therefore not formal, like in top-down, institutional measures of transitional justice, as here a seat in the debate was formally guaranteed to all those interested. It was the lack of a reflection on the informal impediments, like the knowledge of the transitional justice lingo, the unequal access to resources and knowledge among different groups and the lack of efforts to empower more peripheral and less professionalised groups, that hindered full participatory parity.

In sum, the RECOM experiment displayed the limits of the liberal public sphere as described by Fraser (1990: 63-65), being only formally inclusive, without the substantial social equality necessary for a truly democratic process. Moreover, this shortcoming also had the effect of maintaining, rather than expanding, the discursive space on transitional justice in the region. In fact, the key concepts of justice, victimhood and harm were again defined following international legal standards and therefore through the lens of individual criminal responsibility (RECOM, 2011a: Art. 1). Some participants actually advocated for a more flexible conceptualisation of justice and a broader idea of victimhood, but eventually the reference to international standards sponsored by the organisers prevailed.[[13]](#footnote-13) In this sense, RECOM did not push, but *set* the boundaries of what could be legitimately discussed as a justice claim (and, by implication, what could not be), thus defining what transitional justice meant (and did not mean).

Hence, while the RECOM initiative explicitly tried to make up for the flaws of top-down transitional justice, in practice it reproduced some of its limits by embracing a formal interpretation of inclusiveness and legalistic interpretations of justice and victimhood. Whereas the reference to international standards was supposed to compromise among the different conceptions of justice and victimhood represented in the consultations, it eventually constrained the debate to those options compatible with international standards. Following this chapter’s configuration of transformative justice, the transformative potential of the initiative appears to have been limited to challenging ethnic stereotypes and giving a more prominent role to the civil society compared to legal mechanisms of transitional justice. However, RECOM’s transformative potential was far from being fulfilled with regard to the initiative’s potential to produce a substantially inclusive project, able to reach out to the local communities and not only to professionalised NGOs and to encourage the emergence of ideas of justice alternative to the prevalent liberal model.

***The Women’s Court for the Balkans***

Similarly to RECOM, the Women’s Court for the Balkans is a truth-seeking initiative initiated by local civil society organisations from all over the post-Yugoslav space (Ženski Sud n.d.).[[14]](#footnote-14) While RECOM clearly places itself in the transitional justice framework, the main cultural reference of the Women’s Court for the Balkans is the tradition, by now consolidated, of women’s courts implemented by feminist activists worldwide since the 1990s.[[15]](#footnote-15) These are symbolic courts with no judicial powers where people widely trusted in the local society, the ‘judges’, issue recommendations based on a series of testimonies by women ‘witnesses’. The Women’s Court for the Balkans took place in Sarajevo, Bosnia and Herzegovina, from May 4th to 7th, 2015, but it was just the last phase of a long preparation that had lasted more than 10 years. The first idea had actually come up in 2000, sponsored by local activist Žarana Papić and by the international coordinator of the global Women’s Court movement, Corinne Kumar, but it had been abandoned after Papić had passed away (Women’s Court, 2011: 14). After the initiative was re-launched by the Balgrade-based NGO Women in Black in 2006/7, the formal preparatory process started in 2010. It comprised a series of meetings, seminars and presentations with women from throughout the region, during which it was decided who would testify and approximately about what topics.[[16]](#footnote-16)

In the case of the Women’s Court, too, similarly to RECOM, there was a strong awareness of the limits of ordinary justice processes, and the secondary and rather passive role victims play therein. Hence, one of the paramount goals of the initiative was to provide a safe space for women whose stories had not been featured in trials or other transitional justice initiatives, to tell their stories. Judicial mechanisms (and more generally the transitional justice framework) were still considered necessary, but were held insufficient to fulfil the needs of the victims and to reflect the complexity of the conflict and its consequences (Zajović, 2015: 11). In order to complement them, a feminist lens had to be adopted, highlighting the various forms of structural violence that accompanied the 1990s conflicts in the region and the ways the latter specifically affected women (Women’s Court, 2011: 14).

A broader and more nuanced interpretation of the wartime violence and its consequences was the first and foremost contribution of the Women’s Court toward a transformative justice process. In fact, this was the first consistent effort in the region to propose a reading of the violence that would highlight the economic and social consequences of the conflict besides the interethnic and interpersonal violence that are usually in the spotlight. This was realised by including testimonies on various topics, each corresponding to a section of the court featuring several witnesses: 1. War against the civilian population (*Rat protiv civilno stanovništvo*); 2. Woman’s body: a battlefield (*Žensko tjelo: bojno polje*); 3. Militaristic violence and women’s resistance (*Militarističko nasilje i otpor žena*); 4. Persecution of those who are different in war and peace (*Progon drugačijih i u ratu i u miru*); 5. (Un)declared war: social and economic violence and women’s resistance ((*Ne)objavljeni rat: socijalno i ekonomsko nasilje i otpor žena*). The women’s testimonies were then placed in a broader historical and social context by ‘experts’ (academics or activists with an expertise on the specific topic).

One of the most transformative elements of the Court was that it let histories of violence that had never found an escape valve before, such as the predicament of women who lost their jobs after the mass layoffs ensuing from the privatisations, become part and parcel of the transitional narrative.[[17]](#footnote-17) Attesting to the flexibility of the concept of (in)justice, some testimonies featured several forms of violence. A woman victim of wartime rape, for instance, underlined how she had also been a victim of domestic violence and, after leaving her husband, of multiple discrimination: as a refugee, a single mother and someone suffering from mental health issues. But what currently made her suffer the most was that her sons could not find a job due to the current economic situation in Bosnia and Herzegovina.[[18]](#footnote-18) This example also shows how the Women’s Court was able to bring out the interconnectedness of the various forms of violence and, above all, their continuity from wartime into the present. The ability to break the artificial isolation of wartime violence from the present and reveal its significance for current problems is key for a truly transformative process (see Gready and Robins, 2014: 10). In fact, this means directly taking issue with current political problems, like the corruption of ethno-national elites but also the liberal model sponsored by the international community.[[19]](#footnote-19) Through its work, the Court effectively attempted to reconceptualise the very meaning of injustice and justice, by relying on a feminist approach and putting women’s voices and actions at the centre of the process, in a much more substantial way compared to previous transitional justice initiatives, including RECOM. It did not shy away from political issues, but put them at the centre of its work.

The Court’s transformative potential was also visible in the more radical approach it took to increasing local participation.. The Court’s feminist approach to justice, in fact, meant not only a reformulation of what ‘justice’ meant, but also a substantial rethinking of the ways in which women (as the focus of the Court’s work) took part in post-war justice processes. This meant involving the broader society, beyond those actively involved in non-governmental organisation work. Women witnesses, some of whom were not affiliated with any organisations, were ‘the leading subjects of the Women’s Court’ (Women’s Court, Judicial Council, 2015). The judges who wrote the preliminary conclusions of the Sarajevo events recognised that these women ‘have been invisible’, and unable to actively take part in ‘truth telling, history making, and demanding and defining justice’ thus far (Women’s Court, Judicial Council, 2015). As we can see, participation here goes well beyond involvement in transitional justice programmes, and refers instead to a fundamental contribution to shaping the whole process of dealing with past (and present) violence. In this sense, the feminist approach to justice of the Women’s Court constituted a critique of the structural inequalities of liberal democracy and its forms of participation. It effectively created a ‘subaltern’ space of confrontation and deliberation (Fraser, 1990) that foregrounded the agency of women. As noted by O’Reilly (2016: 428), one important aspect of the Court was precisely that it was centred around the role of women witnesses rather than that of experts (who were present, but to provide contextualisation to the testimonies rather than guide the process).

Finally, the Court’s reference to an alternative, more transformative, justice framework is also visible from its detachment from the restorative justice model. While, as mentioned above, the witnesses constituted the core of the justice-seeking process, the purpose was not merely to assist them as passive victims in need of therapeutic support, but rather to empower them. Hence, very often the histories of violence were also histories of resistance. The violence had often prompted the women to become politically active, to protest or organise.[[20]](#footnote-20) The rebuttal of the restorative model, which was communicated clearly in the very first press conference (‘the Women‘s Court is not a psycho-therapeutic court, but a political court’)*,*[[21]](#footnote-21)may be better understood in light of the tendency (particularly of international organisations and NGOs) to ‘patologise’ the Bosnian population, i.e. to focus on the traumatised individual to explain current political and economic problems, while ignoring structural causes (Pupavac and Hughes, 2005: 879-880).

It should be noted that the Women’s Court’s potential was limited in some important ways. For instance, activists remarked that there was a somewhat unbalanced focus on the broader network of the Women of Srebrenica to testify about sexual violence in Bosnia at the expense of other experiences.[[22]](#footnote-22) O’Reilly (2016: 431) has also pointed out the lack of diversity in the wartime experiences of violence told at the Court, such as the lack of stories of women soldiers, which reinforces the stereotype of the war as a mainly masculine endeavour. However, Women’s Court’s activists pointed to the difficult task of selecting only some of the numerous women that wanted to testify, due to the short time available and to the scarcity of funds.[[23]](#footnote-23) In sum, despite some limits, in part related to the limited availability of funds and time, which prevented a comprehensive representation of all aspects of the violence, the Women’s Court succeeded in producing an alternative interpretive framework and justice model. Perhaps its most serious limitation remains its capacity to impact at the institutional level, by effectively turning this interpretive framework into political action beyond the protected space of the Court activities. In fact, with its limited resort to external funds and support, the Women’s Court could not exert the same pressure on regional political elites as more institutionalised initiatives like RECOM.

***The 2014 protests***

The February 2014 protests were sparked by the frustration of workers in the Eastern Bosnian city of Tuzla, where factories had been closing down throughout the transition period, leaving many unemployed. Faced with delayed salaries and social security payments, the workers succeeded in getting a critical mass of protesters to join them, and to surround the cantonal government building. As the police reacted forcefully to the escalation of tensions (the building was damaged by fire and stones thrown at it), citizens and workers in other parts of Bosnia joined the demonstrations. After workers organised informally in Tuzla, other citizens joined the demonstrations spontaneously in other cities. While some political parties made instrumental claims regarding the demonstrators to gain popularity, what characterised this wave of discontent was precisely its informal and grassroots nature. The scope of the protests quickly broadened to include calls for the resignation of governments at cantonal, entity and state level,[[24]](#footnote-24) the revision of privatisation agreements, as well as an end to privileges accorded to political elites (see BH Protest Files, 2014a for a concise summary of the protesters’ demands).

Among the cases analysed in this section, the 2014 protests are the least immediately recognisable as a post-war justice initiative, as the crucial concern of the protesters was socioeconomic. How are these events connected to the war and wartime violence? The protests were in fact linked directly to the war, but in a different way than usually foreseen by the transitional justice literature. Their origins lied in the political economy of the Bosnian conflict, which was mostly based on trafficking, profiteering, and on the seizure of socially-owned property. Economic power was, in many cases, a crucial factor fuelling the military effort (Strazzari, 2003; Pugh and Cooper, 2004; Andreas 2009). As infrastructure was shelled and industry reduced to a fraction of its pre-war capacity, in parts of the country ethnic cleansing overlapped with theft, dismissals from employment, and other measures of social exclusion that constituted a major part of people’s experiences of the war. In Prijedor, a city in north-western BiH, the first impression that the non-Serb population got from the war was the loss of employment on an ethnically discriminatory basis. This was often followed by internment in some of the very industries from which workers had been fired, such as the Omarska iron ore mines and the Keraterm ceramics factory, which were turned into prison camps in 1992.[[25]](#footnote-25) This story of the war as one of economic clashes, destruction, and profiteering went rather unnoticed, especially from the point of view of dealing with the legacy of (socioeconomic) violence. In February 2014, still suffering from the consequences of asset stripping, economic decline and failure to compensate workers in any way, Bosnian citizens mobilised for socioeconomic justice.

While not falling within the canon of transitional justice initiatives, the protests exhibited transformative features, probably to a greater extent compared to the other cases analysed here. Referring to the concepts developed in the previous section and to the questions raised, we can say that the transformative potential of the protests resides in their radical claims related to socioeconomic redistribution, and to the modes of participation and democratic deliberation they adopted.

The 2014 protests effectively turned the experiences of socioeconomic violence experienced in Prijedor, Tuzla, and many other Bosnian cities during the conflict, into a public and political issue for the first time since the end of the war. Experiences of unjustified dismissal, followed by the impossibility of regaining employment after the war, led protesters to make work, and the rights related to work, a central claim.[[26]](#footnote-26) The protests’ focus on privatisations and on regaining control of the economic production process shows the transformative nature of the demonstrators’ demands, as they claim that issues that have, so far, been subject to the neoliberal logic of the market should instead be dealt with through a social justice approach (BH Protest Files, 2014b). These socioeconomic demands expanded quickly into the political realm. The protesters saw the institutional framework established at Dayton as an obstacle to achieving social justice, and as a way of maintaining unfair privileges reserved for the elites, while common citizens struggle to get by (Kurtović, 2015; see also the claims made by protesters in different cities, for example at BH Protest Files, 2014d). The analysis of these justice claims thus shows two things: on the one hand, the 2014 protests begin as a critique of the liberal transition model established in Bosnia with the support of international organisations. They see economic reforms in the area of privatisation, labour laws, and welfare not as redressing the everyday forms of socioeconomic violence they suffered during the war, but as aggravating the situation. On the other hand, they discuss justice issues as inherently political, and envisage redistributive policies and changes in the political and economic model of the country as the primary way of redressing the dire conditions faced by Bosnian people. This has little to do with individual claims brought forward in courts: structural change is needed.

From the point of view of the modes of participation and deliberation, the 2014 protests were characterised by a rejection of ethnicity as a form of identification, and the adoption of a civic model that valued open discussion and direct democracy. In this sense, February 2014 represented a radical response to the rigid ethno-nationalist frameworks of political participation characterising the Bosnian system. Some of the slogans that appeared during the demonstrations exemplify the importance given to socioeconomic issues, beyond any ethnic dimension: ‘we are hungry in three languages’ (*gladni smo na tri jezika*), ‘freedom is my nation’ (*sloboda je moja nacija*), ‘death to nationalism’ (*smrt nacionalizmu*).[[27]](#footnote-27) As one activist put it, the protests had nothing to do with ethnicity, but ‘had everything to do with the positions of an ordinary citizen in this system’.[[28]](#footnote-28) If participants considered themselves citizens (without the need for identifying with an ethnic group), they were also invited to take part in the process of debating and developing the protest claims. City after city, ‘plenum’ assemblies of citizens were formed, which were defined as ‘public gatherings, open to any citizen, through which collective decisions and demands can be made and action taken beyond guarantees of leadership. They are open, direct, and transparent democracy in practice’ (Arsenijević, 2014: 47-48). Plenum assemblies did not have leaders or an internal hierarchy. Each citizen had one vote, and decisions were made at general meetings where everyone had the right to speak, and the discussion was conducted by a moderator (who had no role in representing the plenum outside of the assembly). While the absence of leaders and structure was criticised for curbing the potential of the protest movement (Weber, 2014; Sicurella, 2016), horizontality was a crucial feature of the movement, where activists were trying to encourage a more meaningful form of democratisation than had been promoted through internationally-sponsored ‘civil society building’ projects or ‘local ownership’ (Donais, 2009). Indeed, this radical approach to inclusiveness went hand in hand with criticism of the NGO sector, despite the fact that NGO workers were often present at the meetings in personal capacity.[[29]](#footnote-29)

To sum up, the 2014 protests were a transformative moment because they questioned the necessity and desirability of the liberal transition, while promoting alternative forms of identification that went beyond ethnicity (and that were civic, or based on socioeconomic status), and opening up spaces of public deliberation to common citizens. The protesters’ concern with widening political participation and reclaiming public spaces mirrored new forms of social activism which emerged in the wake of the Arab uprisings and the Occupy movement (Pickerill and Krinsky, 2012; Kaldor and Selchow, 2015). It also demonstrated the relevance of social and economic rights within contemporary forms of activism (Evans, 2015). As the protest movement faded, though, questions regarding their legacy were raised. Many of the informal, grassroots groups formed in February 2014 were quite small, or became so once the street protests ended. Some of these groups still exist in different parts of Bosnia, and were assisted with a limited amount of unconditional funding coming from Austria, but social mobilisation in Bosnia has never reached the levels of 2014 again. For their part, international actors have largely failed to understand the nature of the protests and their connection to the legacy of the war, or how they could have supported the transformative change promoted by the activists (Lai, 2016). Instead, they pushed forward a programme of economic reforms that follows the blueprint of previous attempts at liberalising the market and completing the privatisation process.

However, the 2014 protests also facilitated the creation of activist networks across Bosnia. Citizens of both entities (the Federation and Republika Srpska) saw that a civic mobilisation was indeed possible, and that there are possibilities for entertaining progressive debates on the future of the country.[[30]](#footnote-30) Building on these newly-formed networks, for instance, the so-called Austrian Initiative supported activists and plenum groups from all over Bosnia by providing funding for their running costs, and for activities that the groups themselves could establish, without any form of conditionality, and without requiring them to formally register as an NGO (Ludwig Boltzmann Institute, 2016). In another case, the long-term commitment of the workers of the DITA company in Tuzla succeeded in keeping the detergent factory open and workers employed (Pepić, 2015). While the structural problems affecting Bosnia have not been solved, the protests showed what a potentially transformative mobilisation for post-war social justice can look like.

**Conclusion**

Bosnia is definitely a country in need of transformation: many international actors, NGOs, activists and common citizens would agree. However, if we consider the field of transitional justice, the focus of international efforts has been limited to ‘conventional’ transitional justice mechanisms, and especially judicial ones. Trials have contributed to establishing a record of what happened during the war, and acknowledged the suffering of thousands of victims. They have also, according to some scholars, promoted local mobilisation around justice issues, which has contributed to the democratisation of Bosnian society (Nettelfield, 2010). Without contesting the vital importance of war crimes trials, though, attempts at transformative justice have mostly come from local actors, who have been able to look beyond the transitional focus of the ICTY, and sought comprehensive ways of dealing with the legacy of the conflict, in all its facets.

In this chapter, we analysed what transformative justice might look like in the case of Bosnia and Herzegovina. We argued that several attempts were made to overcome the limitations of judicial, top-down approaches to dealing with the past, and that these attempts originated within the civil society. In our understanding, the ‘transformative’ potential of civil society initiatives is characterised by a critique of the liberal transition paradigm, an engagement with the political nature of transitional justice, and a commitment to more radically open forms of participation and deliberation. The analysis of the case studies shows a great deal of variation between RECOM, the Women’s Court and the 2014 protests, with the latter two initiatives presenting more transformative features than the first: it seems that the further away we move from the transitional justice model, the more transformative potential the initiative contains. At the same time, we might find that, in the long run, the more institutionalised RECOM initiative might have a more prominent legacy, at least in shaping future attempts at dealing with past injustices in the former Yugoslav region. RECOM (similarly to the Women’s Court) also shows that regional activism may be better equipped to deal with a common legacy of violence, and highlight common trends of criminality and injustice that continue into the transition. Scholars such as Bilić (2012) have indeed pointed out that talking about activism while considering the countries of the former Yugoslavia separately constitutes an artificial endeavour. In fact, even the 2014 protests, which were primarily a Bosnian phenomenon, drew on the experiences of social mobilisation from below of, and exchanges between, activist groups from different parts of the former Yugoslavia.

Overall, the chapter suggests that if transitional justice is to survive criticism of its politics, and especially accusations of Western-centrism, legalism, and ineffectiveness, it needs to engage seriously with these grassroots initiatives, not close itself. It should recognise that local actors are varied, and they include potential spoilers of peace and justice processes (Arnould, 2016; McAuliffe, 2017), but also progressive and socially-aware activist groups that, as in the Bosnian case, have been left without institutional and political power by the war and transition, but which could play a crucial role in promoting transformative change. Our emphasis on local initiatives, though, might lead some to question whether the international community should have a role in post-war justice processes at all. We believe that, in today’s globalised world, it is indeed impossible for international actors not to influence these processes. International organisations are present on the ground and have an impact on the daily life of the country, and on its population. Support for certain political, economic and institutional reforms inevitably affects the context within which post-war justice initiatives develop and operate. Moreover, withdrawing financial and organisational commitment from transitional justice programmes in order to promote ‘local ownership’ is in itself a form of intervention that could well have adverse effects. Rather, the international community might seek alternative ways of supporting local processes of dealing with the past, more akin to the Austrian Initiative implemented after the 2014 protests than to formalised projects with complex forms of conditionality. This is a limited example, but is indicative of the need for transformative thinking on the part of donors and external actors as well.

One issue that emerges from this chapter, and that would be worth pursuing in further research, is thus related to the role of international actors in transformative justice. From a conceptual point of view, is it possible for international organisations and donors to be involved in local processes without compromising their success or potential for sustainable social change? And from a practical point of view, what would this international support entail? Aside from these questions, this chapter clearly suggests that much of the transformative potential of local initiatives still remains unrealised. The challenge for researchers and practitioners with a serious commitment to developing this transformative potential will be in understanding these initiatives, their connections to the broader society, and how they might (or could, in the future) support transformative change in post-conflict societies.

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1. Interview with Refik Hodžić, ICTJ, New York, 18 April 2014. [↑](#footnote-ref-1)
2. Interview with Nataša Kandić, Humanitarian Law Center, Belgrade, May 22, 2013. [↑](#footnote-ref-2)
3. While in 2014 the changes suggested by the representatives of the various regional governments have been incorporated in the statute of the prospective commission, there has been no further progress toward the establishment of the regional commission. However, a last effort to revive the initiative has been recently made with the launch of a new signature collection campaign in May 2017. So far, about 50.000 signatures have been collected in the region’s capitals (RECOM, 2017); this follows a previous signature campaign carried out in 2011, when around half million signatures were collected (YIHR Serbia and YIHR Croatia, 2011). [↑](#footnote-ref-3)
4. Interview with Marijana Toma, Humanitarian Law Center, Belgrade, May 22, 2013. [↑](#footnote-ref-4)
5. Interview with Eduardo Gonzalez Cueva, ICTJ, New York, September 13, 2013. [↑](#footnote-ref-5)
6. See for instance the Minute of National Consultations with Young People, Sarajevo, June 27, 2007, p. 12, where participants themselves notice the problematic focus on youth *activists* only. [↑](#footnote-ref-6)
7. For a discussion of the representativeness of NGOs, see Steffeck and Hahn, 2010. [↑](#footnote-ref-7)
8. See, for example, interview with Forum Žena II, telephone interview, November 11, 2014; interview with Refik Hodžić, ICTJ. [↑](#footnote-ref-8)
9. See, for example, interview with Augustina Rahmanović-Koning, Vive Žene, Tuzla, August 9, 2013; Stanojka Tešić, Forum Žena, Bratunac, August 16, 2013. [↑](#footnote-ref-9)
10. For instance, interview with Sakib Ahmetović, Bosniak association of prisoners’ camps survivors (BUPL), Bratunac, August 15, 2013. [↑](#footnote-ref-10)
11. Interview with Alma Masić, YIHRs BiH, Sarajevo, April 29, 2015. [↑](#footnote-ref-11)
12. Interview with Marijana Toma (Serbian in the original, author’s translation). [↑](#footnote-ref-12)
13. See for instance Minute of National Consultations with the Associations of Victims on the Mechanism for the Establishment for the Facts and Truth-telling on War Crimes in the Former Yugoslavia, Belgrade, July 15, 2008, p. 35. [↑](#footnote-ref-13)
14. Its regional organisational committee (*regionalni organizacioni odbor*) was composed by: Cure and Mothers of Srebrenica and Zepa from Bosnia, Center for Women Studies and Center for Women Victims of the War from Croatia, Women’s Network from Kosovo, Council for Gender Equality from Macedonia, Anima from Montenegro, Women in Black and Center for Women Studies from Serbia, Women’s Lobby from Slovenia. Other organizations had been involved with a leading role earlier in the preparation stages, e.g. Forum Žena Bratunac and Žene Ženama (the latter dropped out in 2013) (Interview with Valentina Pellizzer, feminist activist in Sarajevo, telephone interview, November 3, 2013). [↑](#footnote-ref-14)
15. The first women’s ‘tribunals’ were actually created in the 1970s, but a new, more informal kind of women’s ‘courts’ has been implemented more consistently since the 1990s throughout the world (Women’s Court, 2011: 21-48). [↑](#footnote-ref-15)
16. Interview with Forum Žena Bratunac II, telephone interview, November 11, 2014. [↑](#footnote-ref-16)
17. See field notes on the Women’s Court, May 7-10, 2015, Session 6, n.1, woman from Macedonia. [↑](#footnote-ref-17)
18. Field notes on Women’s Court, Session 2, n. 3, woman from Srebrenica. [↑](#footnote-ref-18)
19. Explicit critiques to these issues were expressed in the preliminary recommendations of the judges (Women’s Court, Judicial Council, 2015). [↑](#footnote-ref-19)
20. Field notes on Women’s Court, in particular testimonies from Sections 3 and 5. [↑](#footnote-ref-20)
21. Ljupka Kovačević of NGO Anima of Kotor during the Press Conference opening the WCB on May 5, 2015. [↑](#footnote-ref-21)
22. Interview with feminist activist, Sarajevo, May 27, 2015. [↑](#footnote-ref-22)
23. For example, interview with Jadranka Miličević, Foundation ‘Cure’, Sarajevo, December 15, 2015. [↑](#footnote-ref-23)
24. Bosnia and Herzegovina is divided in two entities: the Federation of Bosnia and Herzegovina and Republika Srpska, each with their own government, and the Brčko District. The Federation is further divided into ten cantons, which also elect cantonal governments. Both the cantons and the entity of Republika Srpska are composed of municipalities. [↑](#footnote-ref-24)
25. Based on interview research conducted in Prijedor in the summer of 2015. [↑](#footnote-ref-25)
26. See interviews with Sarajevo activists on 5 May 2015 and 21 May 2015, and Zenica activist, 7 May 2015. See also BH Protest Files, 2014c. [↑](#footnote-ref-26)
27. Fieldnotes, Tuzla 1 May 2015; see also the Bulletin of Plenum Zenica (Plenum Zenica, 2016). [↑](#footnote-ref-27)
28. Interview with activist in Sarajevo, 21 May 2015. [↑](#footnote-ref-28)
29. Interview with activist in Sarajevo, 16 September 2015. [↑](#footnote-ref-29)
30. Interview with activist in Sarajevo, 16 September 2015. [↑](#footnote-ref-30)